



*Michael S. McManus*

Hon. Michael S. McManus  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re	)	Case No. 10-50106
	)	
ROGER and KERI USRY,	)	Chapter 13
	)	
	)	Date: December 3, 2010
Debtor.	)	Time: 1:30 p.m.
	)	
	)	

**MEMORANDUM**

Movant GE Money Bank seeks relief from the automatic stay with respect to a 2008 Big Dog Motorcycle.

Neither the debtor nor the trustee have filed written opposition on or before 14 days prior to the hearing as required by Local Bankruptcy Rule 9014(d)(1). This is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the

1 above-mentioned parties in interest are entered and the matter  
2 will be resolved without oral argument.

3 The motion will be granted to permit the movant to repossess  
4 its collateral, to dispose of it pursuant to applicable law, and  
5 to use the proceeds from its disposition to satisfy its claim.  
6 No other relief is awarded.

7 The plan requires that the post-petition note installments  
8 be paid directly to the movant by the debtor. In breach of the  
9 plan, the debtor failed to pay approximately six monthly  
10 installments to the movant. This is cause to terminate the  
11 automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432,  
12 434-435 (B.A.P. 9<sup>th</sup> Cir. 1985).

13 Also, to the extent that there may be a co-obligor with the  
14 debtor on the debt owed to the movant or a third person with an  
15 interest in the vehicle, the co-debtor stay of 11 U.S.C. § 1301  
16 will be modified to permit the movant to enforce its claim  
17 against the co-debtor and against the vehicle.

18 Because the movant has not established that the value of its  
19 collateral exceeds the amount of its claim, the movant is not  
20 entitled to fees and costs. See 11 U.S.C. § 506(b).

21 The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) will be  
22 waived.

23 Counsel for the movant shall lodge a conforming order.  
24  
25  
26  
27